

MINISTRY OF HOME AFFAIRS*New Delhi, the 19th January 1951*

No. 7/65/50-Ests.—In exercise of the powers conferred by the proviso to article 309 of the Constitution, the President hereby directs that the following further amendment shall be made in the notification of the Government of India in the late Home Department No. 9/2/33-Ests., dated the 9th January 1934, namely:—

In the Schedule annexed to the said notification for the existing entries under the heading 'Patents and Designs' the following shall be substituted, namely:—

Examiner of Patents. Asstt. Examiner of Patents. Administrative Officer.	Controller of Patents and designs.	Controller of All Patents and designs.
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C. B. GULATI, Under Secy.

MINISTRY OF FINANCE*New Delhi, the 17th January 1951*

No. F.7(1)-Est.IV/51.—In exercise of the powers conferred by the proviso to Article 309 of the Constitution, the President hereby directs that the following further amendment shall be made in the Civil Service Regulations, namely:—

In clause (b) of Article 838 of the said Regulations for the words "the Principal Medical or other authority where the officer resides", the following shall be substituted, namely:—

"the consular or other authority as bearing the signatures of qualified medical practitioners."

B. L. BATRA, Dy. Secy.

MINISTRY OF FINANCE (REVENUE DIVISION)**INCOME-TAX***New Delhi, the 23rd January 1951*

No. 7.—It is notified for general information that the Central Government are pleased to approve the institution mentioned below for the purposes of sub-section (1) of section 15-B of the Indian Income-tax Act, 1922 (XI of 1922):—

Bihar

406. The Assam Earthquake Relief Fund, Bihar.

No. 8.—It is hereby notified for general information that the names of the following institutions are omitted from the list of institutions and funds published with the notification of the Government of India in the Ministry of Finance (Revenue Division), No. 57-Income-tax, dated the 21st October 1948, as being institutions and funds which are approved by the Central Government for the purposes of sub-section (1) of section 15-B of the Indian Income-tax Act, 1922 (XI of 1922):—

1. Government Ghanand Intermediate College, Mussorie (80).
2. Government Girls Intermediate College, Bareilly (81).
3. Government Intermediate College, Allahabad (82).
4. Government Intermediate College, Almora (82A).
5. Government Intermediate College, Banaras (83).
6. Government Intermediate College, Etawah (84).
7. Government Intermediate College, Fyzabad (85).
8. Government Intermediate College, Lansdowne (86).
9. Government Intermediate College, Lucknow (87).
10. Government Intermediate College, Moradabad (88).
11. Government Intermediate College, Naini Tal (89).

PYARE LAL, Dy. Secy.

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA**CHARTERED ACCOUNTANTS***New Delhi, the 16th January 1951*

No. 13-CA(3)/50.—With reference to the notification No. 12-A(1)/47, dated the 29th November 1947 of the Ministry of Commerce, Government of India, it is hereby notified that in exercise of the powers conferred by Regulation 13 of the Chartered Accountants Regulations, 1949, the Council of the Institute of

Chartered Accountants of India is pleased to restore to the Register of Members, with effect from the 16th January 1951, the name of Shri Venkataramiah, Mallimadugulla, Superintendent, Relief Audit Section, Office of the Accountant General, Madhya Pradesh, Nagpur (membership No. 1939).

G. P. KAPADIA, President.

MINISTRY OF COMMERCE**PUBLIC NOTICES****IMPORT TRADE CONTROL***New Delhi, the 18th January 1951*

SUBJECT:—Licences for the import of Capital Goods and Heavy Electrical Plant.

No. 14-ITC(P.N.)/51.—The prior approval of the Reserve Bank of India for the allocation of foreign exchange is no longer necessary in the case of C.G. & H.E.P. Licences, except where it is desired to make advance remittances.

2. Licences for Capital Goods or Heavy Electrical Plant will, therefore, no longer be stamped "not available for foreign exchange unless authorised by the Reserve Bank". They will, however, continue to be stamped "Capital Goods" or "Heavy Electrical Plant", as the case may be, to enable the Reserve Bank of India to sanction advance remittances on application by importers under existing regulations.

3. The endorsement "not available for foreign exchange unless authorised by the Reserve Bank of India" on the Exchange Control copies of existing C.G. and H.E.P. licences will be deemed to have been cancelled.

New Delhi, the 19th January 1951

SUBJECT:—Special quota for Medical contraceptives falling under Serial No. 109 of Part IV for July-December 1950 and January-June 1951 from Soft Currency Areas.

No. 15-ITC(P.N.)/51.—The attention of the Importers is invited to the entries against Serial No. 109 of Part IV of the I.T.C. Schedule in Appendices 'B' and 'C' of the Commerce Ministry Public Notices No. 14-ITC(P.N.)/50, dated the 15th June 1950 and No. 150-ITC(P.N.)/50, dated the 15th December 1950 respectively. Their attention is also invited to the Commerce Ministry Public Notice No. 41-ITC(P.N.)/50, dated the 24th June 1950.

2. It has now been decided to grant a special quota of Soft Currency Licences for January-June 1951, over and above any licences which may already be admissible therefor under quotas already fixed, to cover the import of Medical contraceptives. This quota will be calculated on the basis of 80 per cent. of half of best year's imports of Medical contraceptives.

3. Applications in this behalf should be made to the Import Trade Controllers at the ports in the manner laid down for established importers in Public Notice No. 150-ITC(P.N.)/50, dated the 15th December 1950.

SUBJECT:—Representations against the imposition of penalties for contraventions of Import Trade Control.

No. 16-ITC(P.N.)/51.—The Import Trade Control authorities have been receiving a considerable number of representations against the imposition, or apprehended imposition, of penalties in connection with the import of goods shipped without a valid import licence.

2. It is pointed out that as soon as any goods which require to be covered by a valid import licence, but have nevertheless been shipped without being covered by such a licence, are imported into India, an offence has been committed which, by virtue of section 3(2) of the Imports and Exports Control Act, 1947, is deemed to be an offence under the Sea Customs Act, 1878. Consequently it becomes subject to the adjudication of the Customs authorities concerned, and the Import Trade Control authorities are no longer in a position to intervene in the matter.

3. Persons wishing to make representations in cases of the above type are, therefore, advised to make them direct to the Customs authorities to whom the Import Trade Control authorities will furnish such information as they may require for the disposal of the case. The Import Trade Control authorities will not in future entertain any representations of the above nature received by them direct.

New Delhi, the 22nd January 1951

SUBJECT:—Licensing of "Artists' Brushes" during July-December 1950 and January-June 1951.

No. 17-ITC(P.N.)/51.—The attention of importers is invited to the entries in the 'remarks' column against Serial No. 321 of Part IV of the Import Trade Control Schedule in Appendices 'B' and 'C' respectively of the Commerce Ministry Public Notices Nos. 14-ITC(P.N.)/50, dated the 15th June 1950 and 150-ITC(P.N.)/50, dated the 15th December 1950.

2. It has now been decided that "Artists' Brushes" correctly fall under Serial No. 324 of Part IV of the Import Trade Control Schedule. Accordingly the entries in the remarks column against Serial No. 321 of Part IV should be considered to be in the remarks column against Serial No. 324 of Part IV.

3. Quota certificate in the past have been issued for "Artists' Brushes" both under Serial Nos. 321 and 324 of Part IV of the Import Trade Control Schedule and these will be valid for issue of licences for imports of "Artists' Brushes" irrespective of the classification shown therein.

New Delhi, the 23rd January 1951

SUBJECT:—Licensing of Starch falling under Serial No. 4 of Part V for January-June 1951 period.

No. 18-ITC(P.N.)/51.—The attention of importers is invited to the entries in columns No. 10 and 11 of Appendix 'C' to Commerce Ministry Public Notice No. 150-ITC(P.N.)/50, dated the 15th December 1950, in regard to licensing of Starch and Farina falling under Serial No. 4 of Part V of Import Trade Control Schedule.

2. It has since been decided that licences to actual users of Starch should be granted to cover their 6 months certified requirements on the recommendation of the Textile Commissioner. It has also been decided to raise the quota for established importers from 10 per cent. to 25 per cent. of half of best year's imports.

3. Applications from actual users should be made to the Deputy Chief Controller of Imports, Bombay, while established importers should continue to apply to the Import Trade Controllers at the ports. Applications should be made in the form and manner prescribed in Public Notice No. 150-ITC(P.N.)/50, dated the 15th December 1950.

R. J. PRINGLE, Joint Secy.

MINISTRY OF LABOUR

New Delhi, the 22nd January 1951

No. LR-90(92).—The following Order of the Industrial Tribunal, Calcutta, on an application filed by the Imperial Bank of India, Calcutta, under section 33 of the Industrial Disputes Act, 1947, is hereby published for general information:—

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT CALCUTTA

6, Esplanade East, Calcutta-1.

Before Shri K. S. Campbell-Puri, B.A., LL.B., Chairman.

REFERENCE NO. 1 OF 1950

IMPERIAL BANK OF INDIA

IN THE MATTER OF AN APPLICATION UNDER SECTION 33 OF THE INDUSTRIAL DISPUTES ACT 1947, AS AMENDED BY THE INDUSTRIAL DISPUTES APPELLATE TRIBUNAL ACT 1950, BY THE IMPERIAL BANK OF INDIA, CALCUTTA, FOR PERMISSION TO DISCHARGE:

- (1) Shri Bishan Narayan, Teller at Etawah Branch of the Bank, and
- (2) Shri Darbeshwar Lal,
- (3) „ Balkrishna Mehta,
- (4) „ Gopi Krishna Chowdhury,
- (5) „ Surendra Prasad Nandy, and
- (6) „ Rajeshwar Prasad, Cashiers in the Muzaffarpur Branch of the Bank, from their services with the Bank.

Appearances:

Shri S. K. Mullick for the bank.

Shri Niren De and Shri B. K. Chowdhury for the employees.

ORDER

This is an application under Section 33 of the Industrial Disputes Act for permission to discharge (1) Shri Bishan Narayan, a Teller of Etawah Branch, as well as five Cashiers viz., (1) Shri Darbeshwar Lal, (2) Shri

Balkrishna Mehta, (3) Shri Gopi Krishna Chowdhury, (4) Shri Surendra Prasad Nandy, and (5) Shri Rajeshwar Prasad of Muzaffarpur Branch, and in order to appreciate the discussion, it is necessary that the facts and circumstances which led to the filing of this application at a late stage when the West Bengal award has already been published be shortly stated as follows:

Imperial Bank of India at Calcutta placed Shri Bishan Narayan, a Teller of their Etawah Branch, under suspension on the allegations that he had made a short payment of Rs. 100 to a constituent and attempted to misappropriate the amount and on a complaint made by the constituent he confessed his fault and deposited the misappropriated amount with the Bank signing the deposit voucher himself. The other five Cashiers of Muzaffarpur Branch were also placed under suspension because shortage was detected by the Reserve Bank of India, Calcutta, in a remittance of non-issuable notes sent to them by the Muzaffarpur Branch of the Bank and when called upon to make good the deficiency they refused to do so. The abovementioned employees, however, protested against the order of suspension and through the General Secretary, Imperial Bank Indian Staff Association (Bengal Circle), Calcutta, moved this Tribunal by a petition dated 4th May 1950 whereby the suspension order was challenged on the allegation that the same was made at the instance of the Head Cashier and amounted to the victimisation of the said employees and was liable to be set aside. Notices were issued to the employer, who opposed the application and filed their written statement on the 3rd June 1950. The matter in due course came up for adjudication before my learned predecessor along with other Imperial Bank of India cases for adjudication and in the course of the proceedings it was contended by the employees that the suspension amounted to a violation of Section 33 of the Industrial Disputes Act. My learned predecessor, however, found that the contention was not valid because there had been no alteration in the condition of service of these employees who had been getting their usual pay and allowances as if there had not been any suspension. He furthermore observed that an application for permission under Section 33 must be preceded by an enquiry to which the employees were entitled as a matter of natural justice. In view of the fact that no enquiry into the charges against the above-mentioned employees had been made by that time, the Imperial Bank of India was asked to frame charges and hold the enquiry as expeditiously as possible and in case the suspended persons be found guilty of the offence with which they were charged, the Tribunal be moved under Section 33 for permission to discharge them and that the Tribunal will then consider whether permission to punish should be given or not. It was further said in the Diary Order dated 23rd June 1950 that in case that the employer does not either exonerate the alleged delinquents or make the necessary application within six weeks then the suspended persons shall be deemed to have been exonerated from the charge.

It was in pursuance of this order that the Imperial Bank of India, Calcutta, filed this application on the 2nd August 1950 wherein it was prayed that permission be granted to the Bank to discharge:

- (1) Shri Bishan Narayan, Teller, Etawah Branch,
- (2) Shri Darbeshwar Lal, (3) Shri Balkrishna Mehta, (4) Shri Gopi Krishna Chowdhury, (5) Shri Surendra Prasad Nandy and (6) Shri Rajeshwar Prasad, Cashiers

of Muzaffarpur Branch from their services of the Bank. Notices were issued by my learned predecessor to all the six respondents who denied the charges levelled against them and filed their written statements. On the completion of the pleadings, the case came up for hearing before me when Shri S. K. Mullick, Counsel for the Bank, raised the preliminary objection that under the provisions of Section 33 of the Industrial Disputes Act, it was not necessary to issue any notice to the other side inasmuch as no elaborate enquiry was contemplated for securing permission under Section 33 of the Act. This objection, however, was over-ruled by my order dated 2nd December 1950 which is reproduced as under in order to form it the part of this order:

Extract from Diary Order:

2-12-50.—“The respondent employees are all present. Mr. Mullick, the learned Counsel for the employer has raised a preliminary objection that under the provisions of Section 33 of the Industrial Disputes Act, 1947, it is not necessary to issue notice to the other side inasmuch as no elaborate enquiry is contemplated for securing permission under Section 33 in contrast to one laid down under Section 33-A of the Act. Reliance was placed on a decision of the Madras High Court, published in Labour Law Journal, November 1950 (page 1219) wherein it was held that in an application made by the management under Section 33 it was not necessary to

hold an elaborate enquiry after giving the notice to the workman concerned. Mr. Mullick, in all frankness, also invited my attention to another decision of the Industrial Tribunal, Bangalore (Mysore) in which a contrary view was taken and it was held by the Tribunal that although the application under Section 33 was a summary one and did not practically require any adjudication in the matter still an order made in that section is not to be an ex-parte one unless specifically so laid down in the Section itself. On the perusal of these two legal precedents cited at the Bar, I am of the opinion that the objection raised is not without force and this view in point of fact has already been taken by me also earlier in an application under Section 33 preferred by Prabhat Bank Ltd. for the closure of some of their branches and the consequent retrenchment of the employees concerned; while exercising my discretionary power. The difficulty, however, in this case is that notice had already been issued by my learned predecessor and the same has not only been served, but the parties have rather come to Brass-Tacks by this time. Furthermore, it has been pertinently observed in both of the aforesaid rulings that in appropriate cases notices can well be issued to the other side. There is yet another aspect of the question, namely, that the respondents although having been afforded an opportunity of representing their case before the Enquiry Committee set up to investigate the alleged charges levelled against them, on protest did not participate in that enquiry; and under the circumstances I think it would not be advisable to by-pass the respondents presence once again at this final stage of the adjudication of the case. In the result the case will proceed in the presence of the other side and the objection is over-ruled."

Of the six respondents, the case of Shri Bishan Narayan was heard separately although the proceedings in his case also were consolidated along with the case of other five Cashiers of Muzaffarpur who have been charged for the shortage in the non-issuable currency notes bundles alleged to have been handled by them as Cashiers, on account of joint application for permission to discharge all the six persons.

Bishan Narayan: The charge against this man put briefly is that one Babu Ram filed a complaint with the Bank authority on the allegations that on the 5th of August 1949 he presented a Treasury Bill of Rs. 210 for payment but Shri Bishan Narayan, Teller, paid him Rs. 110 consisting of 22 G.C. notes of Rs. 5 each instead of Rs. 210 and that the short payment of Rs. 100 was detected on the 6th August 1949 by him (Babu Ram) when he was going to disburse the amount to the Land Acquisition staff, whereupon he hurriedly dashed to the Bank and demanded the deficit amount of Rs. 100. The prosecution version further proceeds that on demand of the short payment of Rs. 100, Shri Bishan Narayan opened his register and entered Rs. 100 in his presence in the column of Rs. 1 notes, but the complainant managed to snatch the register from his hands and took it away to the Head Cashier and showed him the fresh entry as well as lodged a complaint against Bishan Narayan. These allegations were supported by the sworn testimony of Shri Jayanti Prasad, Head Cashier, as well as Shri L. C. Chopra, Agent, Etawah Branch, in all material details. Shri L. C. Chopra furthermore stated that Shri Bishan Narayan approached him and confessed his guilt before him and asked him to forgive him and paid up the amount of Rs. 100 for which a voucher (Ex. 9) was prepared by the Head Cashier and the same was signed by Shri Bishan Narayan in his presence. This witness also deposed with regard to the enquiry made by him into the matter but frankly stated that he did not send his report in full because Shri Bishan Narayan had made certain allegations against him in course of the enquiry and did not participate in the proceedings under protest. The defence version on the other hand was that the Treasury Bill no doubt came into the hands of the respondent through the office channel for payment and the payment was made in the form of 22 notes of Rs. 5 denomination in the first instance and the amount of Rs. 100 in the form of Re. 1 denomination note some time after on the same day i.e. on the 5th August 1949. The reason advanced in this connection by Shri Bishan Narayan was that Shri Babu Ram wanted Re. 1 new notes for the amount of Rs. 100 which were not available when the payment was made and Babu Ram left the counter at that time declaring that he would collect the remaining

amount some time after. The Respondent further stated that meanwhile he transacted 3 or 4 other bills and was able to make an exchange of one hundred rupee note into one hundred one rupee notes from a third person and in order to adjust his account he made an alteration in the entry (Ex. 9-A) of 68327 under the heading of total notes into 68227 and scored off the figure under the heading 100 on the register by a cross line. Shri Bishan Narayan also deposed that the change in column 4 under the heading total note was made in pursuance of the change made in the last column explained above because the total number on the of Rs. 100 was reduced by 100 and maintained that this change was effected on the 5th August and it was not correct to say that the change was made on the 6th August 1949 as stated by the Bank side. He, however, admitted that Babu Ram did turn up on the following day and stated that he had not been paid on the preceding day i.e. on the 5th in full payment of the Treasury Bill of Rs. 210. The Respondent furthermore urged that the Head Cashier was inimical to him as he had taken charge from his uncle Shri Swarup Narayan formerly Head Cashier of the Bank and that this case was the up-shot of a conspiracy between the Head Cashier and that of the Agent in order to terminate his services.

Both sides addressed the Tribunal at some length in support of their respective pleas but in these summary proceedings under Section 33 of the Industrial Disputes Act, I do not propose to enter into all the details which they have chosen to bring on the record by adducing good deal of evidence, documentary as well as oral, inasmuch as the Respondent has substantially admitted the prosecution version in his own statement and joined issue only on the question of payment of the excess money on the same day i.e. on 5th August 1949 instead of 6th August as alleged by the complainant.

Now the Treasury Bill was admittedly presented for payment and the amount of the Bill viz. Rs. 210 was duly entered in the Cash Payment Register under the heading 'amount of voucher'. It is also evident from the perusal of the Cash Payment Register that 22 notes of the denomination of Rs. 5 were given as shown under the column (Ex. 9-B) of (5). There is furthermore no divergence in the two versions that Rs. 100 amount was paid some time after. The question consequently which falls for determination is as to whether Rs. 100 were entered on the same day i.e. on the 5th as alleged by the respondent or on the following day when the demand was made by Babu Ram on the 6th August 1949 in order to misappropriate the excess of Rs. 100 which fell into the hands of the respondents.

Now Shri Bishan Narayan, the respondent, has admitted in the course of cross-examination that Babu Ram was known to him before he came to take this payment and in fact he was his old constituent and used to come daily for the payment of Treasury Bills and in the absence of any suggestion on the part of the respondent much less any evidence that Babu Ram bore enmity with Shri Bishan Narayan, the respondents, it is difficult to understand as to why Babu Ram concocted all this story and turned up on the following day to demand the amount of Rs. 100 which was paid to him in the shape of one hundred Re. 1 notes, according to the respondent's version on the 5th after having taken the amount in Re. 1 notes in exchange for Rs. 100 note. It is again hard to believe that the respondent could have anticipated that he will be able to get one rupee new notes some time after when the payment of 22 five rupee notes was made in the first instance in order to meet the wishes of Shri Babu Ram as alleged by the respondent. There is yet another circumstance viz. that the amount of Rs. 100 was admittedly paid by Shri Bishan Narayan on the 11th for which a voucher (Ex. 9) was prepared although Shri Bishan Narayan has qualified the payment by alleging that the same was done on the asking of the Head Cashier that it was necessary to deposit the amount in the course of the investigation and the same will be refunded to him. The Respondent has further gone to the length of saying that he was threatened by the Agent to confess his guilt before an office bearer that he had signed the voucher (Ex. 9) regarding the excess of Rs. 100. It requires good deal of credulity to believe all this that a gentleman of his education and standing in the Bank's service should have submitted to the threats of the Agent for extorting confession out of him. The entries in the two registers furthermore give a direct lie to the version propounded by the Respondent inasmuch as no exchange entry appears on the left side of the register and the Respondent's version collapses to scrutiny when considered in the light of the alterations made in the notes register. It is again unintelligible as to how any reduction was to be made in the amount of total notes when a hundred rupee note was converted into 100 one rupee notes as alleged by the

Respondent. The clumsy attempt of adjusting this excess of Rs. 100 by altering the figure shown in the column of total amount without adding the same amount in any other column rather nails the lie on the counter. These alterations are moreover not initialled by Shri Bishan Narayan and his explanation in that respect is that it is a rough register and does not require any checking. This too is highly incredible and even a cursory glance at the register shows that it is regularly kept and was not to be handled so lightly by making all sort of alterations any time at the Respondent's desire. I furthermore do not see any good reason to disbelieve the Agent when he says that Shri Bishan Narayan approached him and asked his forgiveness on payment of the excess amount and taking all facts and circumstances into consideration and without putting the matter to the test of a regular criminal trial, I feel satisfied that some how or other Shri Babu Ram failed to take the full amount of Rs. 210 on the 5th August and on the following day, when the money was to be disbursed to the Land Acquisition staff, detected the deficiency and he went to Shri Bishan Narayan and demanded the remaining amount. There is however not sufficient cogent evidence for the clear finding as to whether Shri Bishan Narayan had already made alterations in the register and had misappropriated the remaining amount or he fell a victim to the temptation when this demand was made and he actually made certain alterations in order to adjust his account on the Government Register and thereby misappropriated the amount of Rs. 100 on the 6th August 1949. The alterations in Ex. 9-A, however, are so clumsy that it leaves no manner of doubt that the respondent was responsible for the mischief. His subsequent conduct in confessing his guilt before the responsible persons and by signing the voucher prepared for the deposit of the amount furthermore leads to the irresistible conclusion that he was at fault and he did attempt to misappropriate the money. There is some other documentary evidence also on the record with regard to his antecedents and previous acts of misfeasance but as he was not confronted with that documentary evidence when he came into the witness box, I would not use that evidence against him and apart from that I am of the opinion that the Bank is justified in asking for the permission for terminating his services. I would, however, make it clear that the arguments advanced by the Bank that the Head Cashier is not prepared to take the responsibility for his acts and intrusions under the Guarantee system does not prevail with me inasmuch as every employee in the service of the Bank is Bank's employee as observed by their Lordships of the All-India Industrial Tribunal (Bank Disputes) in their award at page 61. In the result, the necessary permission is granted in the case of Shri Bishan Narayan under Section 33 of the Industrial Disputes Act to terminate his services subject to the relief permissible to him under law.

- II. (1) Darbeshwar Lal—(2) Balkrishna Mehta—(3) Gopi Krishna Chowdhury (4) Surendra Prasad Nandy, and (5) Rajeshwar Prasad, Cashiers of Muzaffarpur Branch:

Coming to the case of the abovementioned five Cashiers of Muzaffarpur Branch who have been charged of misappropriating the amount of shortages found in the non-issuable notes bundles sent to the Reserve Bank of Calcutta and Kanpur, it would be desirable for the proper understanding of points involved to give a brief resume of the procedure at the outset which is adopted in sending these bundles to the Reserve Bank as disclosed in the evidence adduced in this case. There are two kinds of Tellers working in a Bank: one called a Receiving Teller and the other called a Paying Teller. The Receiving Teller while sitting on the counter receives cash from the public and makes bundles of 100 from the cash received and attaches Podder's slip with the bundle duly signed by him. He furthermore writes the value of the bundle giving the denomination of the currency note and puts a seal on the slip. Such ten bundles are then put in a packet in the course of the day and the Teller concerned brings those packets to the Head Cashier who picks up a few of them for the purpose of checking by clip system which means that some of the notes are turned over and the remaining are counted by the men concerned and someone else and compared with the clipped notes. Of course hundred rupee notes are all duly checked by the Head Cashier, who after this checking takes charge of these bundles and sends them on for deposit in the strong room. These bundles are put in a chest and in the case of non-issuable notes they are sent to the Reserve Bank in due course of time. The procedure said above was also endorsed by one of the respondents, Shri Darbeshwar Lal, who was examined. The Bank's case was that all these five respondents who were working as Tellers at Muzaffarpur Branch in the course of their duty had put their slips with the bundles which ultimately were sent to the Reserve Bank at Calcutta somewhere in 1948 and 1949. The Reserve Bank, however, found shortage in the remit-

tance of non-issuable notes and certified that the remittance was short of Rs. 3,746. The persons were called upon to explain with regard to the shortage but they pleaded that they were not responsible for the same and it was just possible that somebody in the office of the Reserve Bank at Calcutta might have stolen this amount. Similarly in the case of Kanpur remittance some shortage was certified in the non-issuable bundles and the respondents were called upon to explain and they gave the same reply. This naturally gave rise to certain misgivings and the Agent issued orders for the verification of the non-issuable bundles which were to be sent to the Conciliation Office, Lucknow, as well as in the currency chest balance. On this verification a further shortage of about Rs. 2,700 was found in the currency balance regarding non-issuable notes. The persons concerned were again called upon to explain the discrepancy and to make up the shortage. The story laid down by the Bank proceeds that they in the first instance agreed to pay up the deficiency and asked for some time with the suggestion that the money meanwhile should be paid from the Joint Savings Fund. But subsequently they refused to make up the shortage and insisted that the Podder's slip in future should be signed by the Head Cashier as well as the Accountant along with the Receiving Teller in order to ensure that the deposit of money with the Cashier was alright. On their refusal, the matter was reported to the Agent and some enquiry ensued by the Agent. On the report of the Agent, the matter was referred to the Local Board and they came to the conclusion that the theory advanced by the Cashiers to the effect that they are not responsible in respect of any such bundle handled by them was contrary to the established usage and their implied obligation in that regard and it was further observed that it would be impossible for any Head Cashier to perform his duties and fulfil his obligations to his employers, if he had to give acquittance at the end of each day with regard to the correctness of the cash and as such their verdict was that the Head Cashier's action in revoking his responsibility for the future acts and intrusions of the five Cashiers was justified and they accordingly recommended for the termination of the services of the five Cashiers after obtaining the necessary permission under Section 33 of the Industrial Disputes Act. The matter ultimately as stated in the beginning, came up before my learned predecessor, in the first instance in the course of the West Bengal Bank disputes and was shelved on account of the time given to the Bank for making proper enquiry after charge-sheeting all the respondents and in case the charges were found proved against them to file an application under Section 33.

The Bank in support of the application relied upon the copies of the proceedings of the enquiry and the reports and furthermore examined the Head Cashier as well as the Agent of Muzaffarpur Branch. The respondents also examined Shri Darbeshwar Lal, one of the respondents, and Shri J. P. Nandi. Although a mass of evidence, documentary as well as oral, has come on the record and the enquiry which, under the provisions of Section 33, was of a summary nature, has rather taken the shape of an elaborate trial, yet I think it would not be necessary for me to go into fuller details and the application can be disposed of while taking into consideration the main salient features of the case.

Now the question which pre-eminently falls for consideration is as to whether the respondents can be held liable for the shortage which after more than a year was detected in the Reserve Bank and the extreme penalty of discharge from service for want of making good the deficiency is called for. The Head Cashier in the course of his examination has stated that in May 1947 when Shri A. C. Sen Gupta took over charge as Agent from Shri Aben, he verified the cash and the same was again duly audited by Shri P. P. Pais in 1948 and a certificate was issued to the effect that the cash account was correct. The bundles of non-issuable notes in which shortage has been found by the Reserve Bank were admittedly sent in 1948 and the defence plea was that when on more than one occasion the Cash Balance was duly checked by the Accountant and the Agents periodically, the respondents could not be held liable for the shortage which might have occurred in the Reserve Bank office. The other contention raised in this connection was that the Podder slips were generally destroyed on the deposit of the bundles with the Head Cashier by the Teller previously but when the present Head Cashier took over, he insisted that the Podder slips shall remain intact until the bundles were duly acknowledged by the Reserve Bank. It was also contended that this matter formed the subject of good deal of controversy and several representations were made by the Tellers but to no avail. The respondents accordingly took their stand that the Podder slips remained with the bundles not as a matter of rule but only as the Head Cashier willed it so, and that their responsibility in point of fact ceased when the bundles were checked by the Head Cashier by way of clip system and in the case of hundred rupee notes by full verification process. On the other hand the Bank in support

of Head Cashier's stand maintained that those Tellers whose names still appear on the Podder slips with the bundles, in which shortage has been found, are responsible for the deficiency until and unless the bundles are not duly accepted by the Reserve Bank. The Bank furthermore laid great stress on the prevailing system viz. when the Head Cashier was not prepared to take responsibility for the acts and intromissions of the Tellers, the Bank could not retain them in its service. The question accordingly must be considered from two aspects:

- (1) as to whether the Teller's responsibility ceases when the bundles are made over to the Head Cashier or not;
- (2) whether sheer refusal of the Head Cashier to take the responsibility of the Tellers retention in service by itself is sufficient for the termination of the services of old employees of the Bank.

On the first point, notwithstanding of considerable evidence brought on the record there is no such evidence which be-speaks of any rule or regulation that these slips are not destroyed and are kept intact until the time that the bundles are duly accepted by the Reserve Bank. The respondents in the course of enquiry before the Bank Committee produced a packet purporting to have been signed by one Jha and containing the notes of 1938 pattern and dated 3rd July 1950. The Head Cashier in his statement before the Tribunal admitted that the currency notes of the pattern of 1938 have long since been declared non-issuable notes and the slip in question had not been destroyed or cancelled by that time. The Head Cashier furthermore stated in cross-examination that hundred rupee notes in the bundle are invariably checked by the Cashier and the Accountant before depositing them in the chest and that this was more a rule. In this connection the deposition of the Head Cashier is rather significant and may be reproduced as under:

"The rule further lays down that out of the notes of other denomination beside hundred rupee notes are also to be checked say at least 10 per cent. for the purpose of verification. The rule is there but some time it is not observed owing to the shortness of time."

Shri Sen Gupta, the Agent, in course of cross-examination also stated that he had made enquiries as to how the shortage in remittance of non-issuable notes happened and that in the course of enquiry some body came and told him that three notes, a portion of each of which was torn, had been tendered by some body in payment of the Bill and he sent for the man who tendered these notes and enquired of him as to wherefrom he received those notes and he stated that he had received them from Nath Bank Ltd. The witness has further stated that he suspected that those notes had been torn off from a bundle of note and the matter was reported to the Head Office but the same was not pursued further as the Nath Bank was not able to throw further light as to wherefrom they received those notes. Shri Sen Gupta further deposed that this was correct that he had seen some slips during the course of the re-examination of the notes which bore evidence of having been stitched twice and that the shortage in question no doubt was unprecedented so far his experience goes. On the point as to whether the Podder Slips are destroyed or kept intact Shri Gupta deposed that he could not say whether Podder slips are destroyed when they are issued to the Paying Teller or not.

Without elaborating the point any more or referring to other evidence, it seems sufficiently clear to me from what has been quoted above from the evidence of the Head Cashier as well as the Agent, Shri Sen Gupta, that the rules are not being strictly observed and there is furthermore no hard and fast rule that the Podder slips are to be destroyed after the Teller has deposited the amount with the Head Cashier or the same remain with the bundles upto the time when the packets are duly acknowledged by the Reserve Bank to have been received intact for value in full. I am conscious that the working in Banks is of very delicate nature and the employees of the Bank should keep themselves much above any reproach and however slight the negligence on their part, much less mischief or misappropriation in money matters is found, the whole working of the institution is likely to suffer but on the other hand one cannot be of oblivious of the security of service of the persons who happened to have given their life blood and had grown grey in the service of the Bank to be shunted off without the accusation having been atleast reasonably brought home to them. There is also some force in the argument that the functioning of the Bank rather gets hampered if the Head Cashier does not take the responsibility for the Tellers who are employed by the Bank on his recommendation. But in view of the dictum laid down by their lordships of the All India Industrial Tribunal (Bank Disputes) in their award at

Head Cashiers under the Guarantee system are in point of fact the employees of the Bank and as such are amenable to the jurisdiction of the Tribunals regarding the conditions of their employment, etc. This system of Guarantee Cashiers, however time honoured it may be, cannot be allowed under the dictates and provisions of the labour legislation, to mean that the employees of the Cash Department are the hirelings of the Head Cashier and are liable to be dismissed sheer on his asking. If that be so, then the staff of the Cash Department shall have to be changed every time with the change of the Head Cashier and there will be no security of service in this important branch of business. I am also alive to the fact that service in Banks must be based primarily in integrity of the employee and that loss of confidence in the employee of the Cash Department may justify his removal from service after giving him an opportunity to explain, but this does not mean that the employer should feel unconcerned and leave the whole matter entirely into the hands of the Head Cashier. In principle and in point of fact, when these persons are the employees of the Bank, the employer to my mind shall have to stand in between the employees and the Head Cashier just, I would say, as the Tribunal has to adjudicate between the employers and the employees.

Now the local board in their report has recommended for the discharge of these Cashiers on two grounds viz. that no other Head Cashier would be prepared to accept the responsibility for them in view of their reputation of liability and secondly, nor are they suitable or qualified for employment in any other department. I regret that I have not been able to persuade myself to agree with the first part in the light of the above observations and if any cogent evidence had been adduced with regard to the second part "that they are not suitable for employment in any other department" (or can be retained where they are already working); I should not have hesitated to fall in line with the report. But in the absence of clear proof of misappropriation and any evidence that they are incompetent or not qualified for employment in the Bank, the finding of the Board shall have to be received with caution. The evidence taken as a whole may well create certain suspicions against the Cashiers that as they had handled the bundles in the first instance, the responsibility was theirs; but as disclosed by the same evidence, the bundles changed hands on more than one occasion and in the absence of any rule that the Podder slips actually are not destroyed, it is highly unsafe to penalise them more especially when some of the other bundles were found double stitched as well as some of the notes were found torn out of the bundles. It is just possible that the bundles in question also after having been deposited in the chest by the Head Cashier might have been handled by some other persons.

In this view I am fortified by the observations and the finding given by their Lordships of the All India Industrial Tribunal (Bank Disputes), Bombay, in their award at pages 229-230 in the case of (1) N. C. Chowdhury and (2) Surendra Prosad Mishra. The facts of this decided case are almost identical with that of the Respondents case and may profitably be reproduced in extenso from the aforesaid award:

"These cases of two employees who were Cashiers in the cash department relate to their dismissal by reason of the fact that the Head Cashier refused to take responsibility for them and wanted them to be removed because in certain bundles signed for and vouched by N. C. Chowdhury there was a shortage of Rs. 1,116 in non-issuable notes and in certain other bundles signed for and vouched by Surendra Prosad Mishra there was a shortage of Rs. 997. According to the practice in the cash department a Cashier at the end of the day's work puts in bundles each containing issuable and non-issuable notes of the value of Rs. 100, with a slip attached to each bundle showing the name of the Cashier from whom this bundle came. Upon the receipt of the notes, according to the said practice, the Head Cashier, after counting them keeps them in the strong room which is kept under lock and key by the Head Cashier and the Accountant and the non-issuable notes are in course of time transmitted to the Reserve Bank for necessary action. From the Monghyr Branch such notes were sent to the Reserve Bank Office at Kanpur. There was formerly a rule that a person should accompany the remittance from the remitting branch in whose presence the notes were counted, but that rule having been discontinued since 1944, various shortages were being complained of after the counting in the Reserve Bank office at Kanpur, where the counting was done by the Poddar of the Reserve Bank in the presence of the Poddar of the local Imperial Bank Branch. These men had been protesting

against this kind of counting since 1944, although the shortages had previously been small; but they had to compensate the Head Cashier in respect of their respective quotas as the Head Cashier had to compensate the Bank for the shortages. This time, however, the shortage having been a very large sum, the employees refused to pay and their complaint is that the Bank authorities should rectify the system of counting at the Reserve Bank so that these employees' interests would be protected. According to them their responsibility ceased when they made over their bundles to the Head Cashier whose business was to take them over after duly verifying them. The two employees were given an opportunity of resigning from the Bank's service but as they refused to do so the Bank terminated their services after paying them one month's salary in lieu of notice. This course was suggested by the Head Cashier who said that it was impossible for him to accept responsibility for them adding, "There were six cashiers working, and the pressure of work being generally heavy it was not possible for me alone to check up all the bundles of the six persons in one hour between 4 p.m. and 5 p.m. when the strong room had to be closed and reliance in good faith was kept in these men; as no sound administration can deny at least some amount of reliance and faith amongst its workers any more than it can inolate (?) its discipline and integrity", Mr. Roy Chowdhury who appeared for the employees has contended that it was not likely that the men who had to sign the slips would risk detection and that under the rules all the bundles should have been counted by the Accountant and the Head Cashier. He suggested that the notes might have been stolen at Kanpur and that at least the Head Cashier was partly responsible for the loss, being responsible for the department as a whole. These two men were money testers who had given security to the Head Cashier, who in his turn had given security to the Bank. In view of the large number of notes that were sent daily from Monghyr branch to the Kanpur branch it was obviously not possible for the Head Cashier to count all the bundles himself. In these circumstances a good deal of reliance had to be placed on the money-testers and even if in this case the money testers were not responsible the Bank appears to have acted on

the view that it had to act in such manner that the shortage in notes was stopped or reduced in consequence; and in any case, according to the Bank, a great deal of suspicion attached to these men. We think, however, that the difficulty in fixing the responsibility on specific individuals was largely due to the old practice of counting the notes in the presence of a person accompanying the remittance having been abandoned. That being our view, we do not think that the two employees in question should have been penalised by being dismissed or discharged. In the circumstances we direct that they should be taken back into the service of the Bank within one month of the date with effect from which the Award will become operative and that each of them should be paid his full pay and allowances in respect of the six months prior to his reinstatement."

For all these reasons, I am of the opinion that the guilt against these Cashiers has not been established beyond reasonable doubt and no amount of surmises and suspicions can take the place of proof. To my mind, the need of the hour for the Bank is to overhaul the system and bring it on good sound basis as to leave no room in regard to the responsibility to be apportioned amongst the various incumbents who have to deal with this work than to ask for the permission of terminating the services of these persons sheer to help the cause of the Head Cashier who is directly responsible to the Bank (employer) for making up the deficiency. In the result I would decline the permission asked for in the case of these five Cashiers of Muzaffarpur Branch and the suspension order in their case will *ipso facto* be annulled.

In view of the fact that this application was a direct sequel of the original claim filed by the Respondents in the West Bengal Bank disputes, this order will be treated as supplement to the West Bengal Bank disputes award and submitted to the Ministry of Labour for publication.

CALCUTTA,
16th December 1950.

K. S. CAMPBELL-PURI,
Chairman,

Central Government Industrial Tribunal,
Calcutta.

N C. KUPPUSWAMI, Under Secy.

